

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

\* \* \*

DANIEL GONZALEZ, et al.,

**Plaintiffs,**

V.

**DIAMOND RESORTS INTERNATIONAL  
MARKETING, INC.,**

## Defendant.

Case No. 2:18-cv-00979-APG-CWH

## ORDER

**Defendant.**

Presently before the court is plaintiffs Daniel Gonzalez and Jeffrey Hughes' motion for conditional certification as a collective action (ECF Nos. 43, 44), filed on February 26, 2019. Defendants Diamond Resorts International Marketing, Inc. and West Maui Resorts Partners, L.P. filed a response (ECF No. 46) on March 12, 2019. Plaintiffs filed a reply (ECF No. 47) on March 19, 2019.

## I. BACKGROUND

This Fair Labor Standards Act collective action arises from allegations by former and current sales-representatives who worked on-site at defendants' resorts. (Compl. (ECF No. 1).) Plaintiffs allege that defendants unlawfully paid non-exempt employees overtime based upon the regular rate of pay, rather than total amount of earnings, including any bonuses or commission. (*Id.*) Plaintiffs now move to 1) conditionally certify this case to proceed as collective action, 2) require defendants to produce contact information for sales representatives during this time period, 3) require that defendants internally post notice to all putative class members, 4) require defendants to mail and email all putative class members, 5) and to toll the statute of limitations. (Mot. for Conditional Certification (ECF Nos. 43, 44).) Defendants respond that the motion should be denied as plaintiffs have failed to demonstrate that conditional certification is

1 warranted. (Resp. (ECF No. 46).) Plaintiffs reply that they have met their burden in establishing  
2 that they are similarly situated to the other sales representatives. (Reply (ECF No. 47).)

3 **II. CONDITIONAL CERTIFICATION**

4 Plaintiff moves for conditional certification of the putative class. Under Section 216(b) of  
5 the FLSA, an employee may bring a collective action “[o]n behalf of himself or themselves and  
6 other employees similarly situated.” 29 U.S.C. § 216(b). Additionally, “[n]o employee shall be a  
7 party plaintiff to any such action unless he gives his consent in writing to become such a party  
8 and such consent is filed in the court in which such action is brought.” *Id.* Section 216(b) does  
9 not require the district court to authorize notice to potential plaintiffs, but it is within the court’s  
10 discretion to issue such authorization. *See McElmurry v. U.S. Bank Nat. Ass’n*, 495 F.3d 1136,  
11 1139 (9th Cir. 2007). The court must determine whether the proposed lead plaintiffs and the  
12 proposed class action are similarly situated. *See Grayson v. K Mart Corp.*, 79 F.3d 1086, 1096  
13 (11th Cir. 1996) (“plaintiffs need show only that their positions are similar, not identical, to the  
14 positions held by the putative class members.” (internal quotations omitted)). The statute does  
15 not define similarly situated, nor has the Ninth Circuit interpreted the term. *See Heath v. Google*  
16 *LLC*, 345 F. Supp. 3d 1152, 1164 (N.D. Cal. 2018). Nonetheless, courts in this circuit use a two-  
17 stage approach, which includes “initial notice to prospective plaintiffs followed by a final  
18 evaluation whether such plaintiffs are similarly situated.” *See e.g., Leuthold v. Destination Am.,*  
19 *Inc.*, 224 F.R.D. 462, 466 (N.D. Cal. 2004); *see also Dualan v. Jacob Transportation Servs.*,  
20 LLC, 172 F. Supp. 3d 1138, 1143-44 (D. Nev. 2016).

21 In the first stage, the court “applies a fairly lenient standard and typically grants  
22 conditional class certification,” because the determination is made prior to the close of the  
23 discovery and is based on limited evidence. *Misra v. Decision One Mortg. Co., LLC*, 673 F.  
24 Supp. 2d 987, 993 (C.D. Cal. 2008). “Plaintiff[s] need only make ‘modest factual showing  
25 sufficient to demonstrate that [they] and potential plaintiffs together were victims of a common  
26 policy or plan that violated the law.’” *Id.* (quoting *Realite v. Ark Rests. Corp.*, 7 F. Supp 2d 303,  
27 306 (S.D.N.Y. 1998)). If the court conditionally certifies the class, then putative class members  
28 are given notice and the opportunity to opt-in. *Id.* District courts are also authorized to monitor

1 the “preparation and distribution” of notice to putative class members upon the certification of the  
2 collective action in the notice stage. *See Hoffman-La Roche v. Sperling*, 493 U.S. 165, 172  
3 (1989).

4 The second stage occurs following the end of discovery, where the court uses a stricter  
5 standard to assess the scope of the class. *Leuthold*, 224 F.R.D. at 467. The court reviews the  
6 following factors at this stage: “(1) the disparate factual and employment settings of the  
7 individual plaintiffs; (2) the various defenses available to the defendants with respect to the  
8 individual plaintiffs; and (3) fairness and procedural considerations.” *Id.*

9 Here, plaintiff moves for conditional certification, arguing that they are similarly situated  
10 to the putative class members because all were classified as non-exempt sales representatives and  
11 subjected to defendants’ unlawful policies of computing overtime pay on the hourly wage  
12 excluding bonuses and commission. Defendants argue that plaintiffs have failed to demonstrate  
13 that they are similarly situated to a well-defined group, as defendants do not employ anyone in the  
14 “sales representative” position. Defendants further contend that plaintiffs offer only mere  
15 assertions to support allegations regarding an unlawful pay scheme. In reply to defendants’  
16 arguments, plaintiffs contend that sales representatives are technically titled “Vacation  
17 Counselors,” but that defendants have commonly referred to employees serving in this capacity as  
18 sales representatives.

19 The court finds that the first-stage analysis governs this case, as the action is in the early  
20 stages of litigation. The court notes that although discovery began in November 2018, this  
21 motion was filed in February of 2019, and that two months of discovery still remain. (*See*  
22 Scheduling Order (ECF No. 38).) It is therefore appropriate for the court to apply the lenient  
23 standard that requires a modest showing that the putative class action members were victims of a  
24 common policy or plan. *See Misra*, 673 F. Supp. 2d at 993.

25 Having applied such a standard, the court finds that plaintiffs have made the requisite  
26 showing that they are similarly situated to the putative class members for the limited purpose of  
27 conditional certification. Plaintiffs provide declarations alleging that they, and other non-exempt  
28 sales representatives, were paid on a commission and bonus basis with an hourly minimum wage

1 advance.<sup>1</sup> (See Decl. Daniel Gonzalez (ECF No. 43-3) at 3; Decl. Jeffrey Hughes (ECF No. 43-4)  
2 at 3.) Plaintiffs also declare that they, and other non-exempt sales representatives, worked more  
3 than 40 hours a week and were not paid overtime wages based on the total amount of  
4 compensation for the workweek, including any commission or bonus earnings. (See Decl. Daniel  
5 Gonzalez (ECF No. 43-3) at 3; Decl. Jeffrey Hughes (ECF No. 43-4) at 3.) Further, plaintiffs  
6 have demonstrated that the practice was company-wide, as defendants have failed to oppose  
7 plaintiffs' contention.

8 As support for those declarations, plaintiffs provide pay stubs depicting instances where  
9 they worked overtime hours during certain pay periods, but were nevertheless paid overtime  
10 based upon the hourly minimum wage rate of pay rather than the total amount of compensation  
11 including commissions or bonuses. (See Decl. Daniel Gonzalez (ECF No. 43-3) at 3; Decl.  
12 Jeffrey Hughes (ECF No. 43-4) at 4; Compl. (ECF Nos. 1-3, 1-4).) Plaintiffs then declare that  
13 other sales representatives share the same job duties of marketing and selling ownership interests  
14 in defendants' properties, and that all defendants' properties share a common structure. (See  
15 Decl. Daniel Gonzalez (ECF No. 43-3) at 2-3; Decl. Jeffrey Hughes (ECF No. 43-4) at 2-3.)

16 Lastly, while plaintiffs refer to the job title for the putative class members as "Sales  
17 Representatives," rather than the technical term of "Vacation Counselors," the court still finds  
18 that plaintiff have identified a tenable class because of the duties and responsibilities associated  
19 with the position. However, given that plaintiffs concede the technical term of the position, the  
20 court finds it necessary for plaintiffs to modify the collective class definition to include "Vacation  
21 Counselors." Plaintiffs are also ordered to modify their proposed notice and consent form to  
22 include "Vacation Counselors."

23 \_\_\_\_\_  
24 <sup>1</sup> Defendants argue that plaintiffs lack personal knowledge of the statements made in the declarations and  
25 that the declarations are inadmissible. Another court in this district adopted the principles in *White v.*  
26 *MPW Industrial Services, Inc.*, stating that "affidavits or other evidence submitted in support of a motion  
for conditional certification are not required to meet the admissibility standard set forth in Fed. R. Civ. P.  
56(e)." *Pittman v. Westgate Planet Hollywood Las Vegas, LLC*, No. 2:09-cv-00878-PMP-GWF, 2009 WL  
10693400, at \*8 (D. Nev. Sept. 1, 2009) (citing *White v. MPW Industrial Services, Inc.*, 236 F.R.D. 363,  
368 (E.D. Tenn. 2006)). Further, personal knowledge may be inferred based on "what the affiant would  
have probably learned during the normal course of employment." *Id.* The court adopts this reasoning in  
accepting the declarations provided by plaintiffs.

1           **III. CONTACT INFORMATION FOR PUTATIVE CLASS MEMBERS**

2           Plaintiffs next request an order requiring defendants to provide contact information for the  
3 putative class members employed from May 29, 2015 through the present within 10 days, in order  
4 to effectuate notice. Defendants do not oppose plaintiffs' request for a list of contact information  
5 for putative class members, but request that the contact information be submitted to a third-party  
6 administrator.<sup>2</sup> Defendants' failure to contest the request for the contact information constitutes  
7 consent to granting plaintiffs' motion on this issue. *See* LR 7-2(d). As for the issue of the third-  
8 party administrator, defendants argue that a third-party administrator is better equipped to handle  
9 the sensitive information. Having reviewed the docket, it appears that the parties have stipulated  
10 to a protective order. (*See* Joint Mot. for Protective Order (ECF No. 48); Order (ECF No. 49).)  
11 The protective order should suffice in ensuring the protection of the information. Therefore, the  
12 court grants the request for the production of the contact information for putative class members.

13           **IV. CONSENT FORM**

14           Because the court has granted conditional certification, the court must now evaluate  
15 plaintiffs' proposed notice and consent form. Once a collective action is conditionally certified,  
16 the court may authorize plaintiffs' request to send notice to potential plaintiffs, and the court may  
17 set a deadline for potential plaintiffs to opt-in to the lawsuit. *See Does I thru XXIII v. Advanced*  
18 *Textile Corp.*, 214 F.3d 1058, 1064 (9th Cir. 2000). In issuing notices to putative class members,  
19 the court "must take care to avoid even the appearance of judicial endorsement of the merits of  
20 the action." *Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 174 (1989).

21           Plaintiffs have provided the court with a proposed notice and consent form. (*See* ECF No.  
22 43-1.) Defendants request that the court reject the proposed notice and consent form, arguing that  
23 the form lacks judicial neutrality and that the language referencing plaintiffs' counsel's  
24 contingency fee should be omitted. Defendants further request that the court order plaintiff to  
25 include information regarding the contingency fee percentage agreed upon by plaintiffs and their

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27           <sup>2</sup> While defendants do not contest this request, defendants argue that certain putative class members should  
28 not receive notice and contest the manner in which notice should be given. The court will address those  
issues in turn.

1 counsel. Plaintiff replies that that the notice is sufficiently neutral because it provides language  
2 that the court has taken no position in this case.

3 Having reviewed the proposed notice, the court finds that some of the language in the  
4 notice creates the appearance of a judicial endorsement. Here, the notice states in bold font that:

5 **THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE**  
6 **FEDERAL DISTRICT COURT, THE HONORABLE ANDREW P. GORDON,**  
7 **FEDERAL DISTRICT COURT JUDGE. THE COURT HAS TAKEN NO**  
8 **POSITION IN THIS CASE REGARDING THE MERITS OF THE**  
9 **PLAINTIFFS' CLAIMS OR OF DEFENDANTS' DEFENSES.**

10 (Mot. for Conditional Certification (ECF No. 43-1) at 7.) Plaintiffs are instructed to delete the  
11 first sentence of the above quoted section, to avoid the appearance of partiality by the court.

12 As for the issue of the contingency fee stated in section 5 of the proposed notice<sup>3</sup>, the  
13 court finds that plaintiffs must amend the notice to include the percentage of the fee that  
14 plaintiffs agreed to pay their counsel and how that fee will be calculated. *See Dualan v. Jacob*  
15 *Transportation Servs., LLC*, 172 F. Supp. 3d 1138, 1151 (D. Nev. 2016). Further, Plaintiffs are  
16 not required to amend the notice to exclude reference to plaintiffs as the “class representatives.”  
17 Defendants properly argue that collective actions are mass actions where the workers act as a  
18 collective without a specific representative who controls the litigation. *See Campbell v. City of*

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19 <sup>3</sup> The notice currently states:

20 If you choose to join this suit, you will be bound by any judgment entered, although you  
21 cannot be required to pay Defendants' attorney's fees whether Plaintiffs win or lose this  
22 suit. While this suit is proceeding, you may be required to respond to written questions,  
23 sit for depositions, and/or testify in court.

24 The attorneys for Plaintiffs are being paid on a contingency fee basis, which means that if  
25 there is no recovery, there will be no attorney's fee. If there is a recovery, the attorneys  
26 for the Class will receive a part of any settlement obtained or money judgment entered in  
27 favor of all members of the Class.

28 By joining this lawsuit, you designate the named Plaintiffs (the Class Representatives) as  
29 your agents to make decisions on your behalf concerning the litigation, the method and  
30 manner of conducting this litigation, the entering of an agreement with Plaintiffs' counsel  
31 concerning attorney's fees and costs, and all other matters pertaining to this lawsuit.

32 These decisions and agreements made and entered into by the Representative Plaintiffs or  
33 Class Representatives will be binding on you if you join this lawsuit.

34 (Mot. for Conditional Certification (ECF No. 43-1) at 5-6.)

1        *Los Angeles*, 903 F.3d 1090, 1105 (9th Cir. 2017). However, the Ninth Circuit in *Campbell v.*  
2        *City of Los Angeles* also stated that workers in a collective action may separately agree to the  
3        designation of a class representative. *Id.* (“A collective action is more accurately described as a  
4        kind of mass action, in which aggrieved workers act as a collective of *individual* plaintiffs  
5        with *individual* cases—capitalizing on efficiencies of scale, but without necessarily permitting a  
6        specific, named representative to control the litigation, except as the workers may separately so  
7        agree.”) (emphasis in original). Here, the proposed notice states that “[b]y joining this lawsuit,  
8        you designate the named Plaintiffs (the Class Representatives) as your agents to make decisions  
9        on your behalf concerning the litigation . . . .” (Mot. for Conditional Certification (ECF No. 43-  
10      1) at 5-6.) Plaintiffs have crafted the notice in a manner that permits potential opt-in plaintiffs to  
11      agree to the designation, in accordance with *Campbell*. As such, plaintiffs are not required to  
12      omit the information. Plaintiffs must, however, omit any reference to the website, as plaintiffs  
13      have not presented the court with any information regarding the contents of the website nor the  
14      consent form to be displayed on the website.

15           Lastly, the court does have one concern regarding the proposed notice form as it pertains  
16      to those that are subject to an arbitration agreement and those who have potentially released the  
17      claims at issue in this dispute. Defendants raise this issue and argue that certain putative  
18      members are not entitled to notice. Specifically, defendants argue that the following groups  
19      should not receive notice: employees subject to an arbitration agreement, employees who have  
20      released claims in the California Wage and Hour case,<sup>4</sup> and those employed more than two-years  
21      before the notice issue date. Plaintiffs argue that defendants’ arguments fail at this stage, as they  
22      require an assessment of the validity of the arbitration agreement and the release of claims.  
23      Plaintiffs also argue that any factual determinations of the scope of the collective action is  
24      appropriate for the second stage, and that the jury decides which statute of limitations period  
25      applies. The court finds plaintiffs’ arguments persuasive for the following reasons.

26  
27      <sup>4</sup> Plaintiffs and defendants make reference to Case No. RIC1510389 pending before the 4th Appellate  
28      Division in California state court. No further information regarding the claims at issue in that case were  
provided.

In support of their argument regarding the arbitration agreement, defendants cite to a recently issued Fifth Circuit case where the court concludes that district courts do not have discretion to require notice of a pending FLSA collective action to an employee subject to a binding arbitration agreement. *See In re JPMorgan Chase & Co.*, 916 F.3d 494, 504 (5th Cir. 2019). The court has reviewed the Fifth Circuit opinion and declines to adopt the court's reasoning. Withholding notice because of the existence of an arbitration agreement presupposes the enforceability of the agreement. Further, the validity of the arbitration agreement is not an issue before this court. Lastly, the existence of an arbitration agreement goes to an aspect of defendants' defense, and the enforceability of such an agreement is better reserved for stage two. *See Conde v. Open Door Mktg., LLC*, 223 F. Supp. 3d 949, 969 (N.D. Cal. 2017) ("[T]he fact that there is an arbitration agreement goes to Defendants' defenses, not the common policy. Thus, the enforceability of the arbitration agreements is better reserved for the step two determination, not step one."); *see also Romero v. La Revise Assocs., L.L.C.*, 968 F. Supp. 2d 639, 647 (S.D.N.Y. 2013) ("[D]efendants' proposal essentially amounts to an invitation for the Court to adjudicate the validity of the arbitration agreements. But ... this sort of merits-based determination should not take place at the first stage of the conditional collective action approval process.").

While the court declines to evaluate the enforceability of the arbitration agreement or to evaluate the alleged release of claims, the court finds it reasonable for plaintiffs to include language that discusses how the arbitration agreement and a release of claims may potentially affect opt-in plaintiffs. *See Greene v. Omni Limousine, Inc.*, No. 2:18-cv-01760-GMN-VCF, 2019 WL 2503950, at \*6 (D. Nev. June 15, 2019) (where the court ordered plaintiffs to include provisions about the arbitration agreement, because it would assist potential plaintiffs in making an informed decision). As for the statute of limitations argument raised by defendants, that determination is also one that is better left for the second stage and, if necessary, the jury.

Plaintiffs are instructed to make all necessary changes consistent with this order, and to meet and confer with defendants' counsel prior to resubmitting an amended proposed notice and consent form. An amended proposed notice and consent form must be submitted to the court within 30 days from the date of this order.

1           **V.     NOTICE PERIOD**

2           Next, plaintiffs request the court to approve a 90-day opt-in period. Defendants object to  
3           the period, arguing that courts in this district have routinely approved 60 days for plaintiffs to  
4           respond. The court finds that a 90-day period is reasonable, as it provided recipients of the notice  
5           sufficient time to consider their options and to determine whether they may opt-in, given the  
6           issues regarding the arbitration agreement and a potential release of claims. The 90-day period is  
7           also consistent with the notice time routinely granted in this circuit. See *Dulan, see also Benedict*  
8           *v. Hewlett-Packard Co.*, No. 13-CV-00119-LHK, 2014 WL 587135, at \*13, 15 (N.D. Cal. Feb.  
9           13, 2014) (collecting cases). The 90 days will begin on the date that the notice is mailed.

10          **VI.    MANNER OF SERVICE**

11          Plaintiffs next contend that the notice and consent form should 1) be sent by plaintiffs'  
12           counsel via mail and email, 2) be posted by defendants on-site at all locations, and 3) be enclosed  
13           with the next-regularly scheduled paycheck for currently employed potential opt-in plaintiffs.  
14           Lastly, plaintiffs request that they be permitted to send a mail and email reminder. Defendants  
15           object to plaintiffs' request for multiple delivery methods, arguing that plaintiffs have failed to  
16           present a need or a compelling reason to justify a reminder notice.

17          The court grants plaintiffs' request to contact putative class members by mail and by  
18           email. Mail is permitted, as it is the preferred method for class certification notice. *See Pittman*,  
19           2009 WL 10693400, at \*10. The court finds it reasonable to permit electronic notice, as it "is an  
20           efficient and inexpensive method for providing notice where the intended recipients have  
21           reasonably accessible email addresses." *Id.* The court declines to order defendants to post the  
22           notice on-site at all locations, as plaintiffs have not demonstrated a need for this manner of  
23           service. Further, notice in this manner will cause confusion as it will be seen by those who are  
24           not in the proposed class and increase the likelihood of ineligible plaintiffs attempting to opt-in.  
25           The court also does not find it necessary to require defendants to distribute the notice with a  
26           regularly scheduled paycheck, as this method is redundant to the mailing of the notice. Lastly,  
27           the court finds it reasonable to permit plaintiffs to send a proposed reminder postcard and email to  
28           putative class members who have not joined the action within the first 45 days. Plaintiffs must

1 submit an amended proposed postcard and email reminder that is consistent with this order, no  
2 later than 30 days from the date of this order.

3 **VII. EQUITABLE TOLLING**

4 Plaintiffs also move the court to toll the statute of limitations from the date of May 29,  
5 2018 through the time putative class members may join this action because defendants received  
6 notice at the time the lawsuit was filed and were aware that putative class members could be  
7 entitled to compensation. Plaintiffs then argue that the court should, in the alternative, toll the  
8 action from October 31, 2018, the date when counsel for the parties participated in Rule 26(f)  
9 conferences and discussed the possibility of equitable tolling.

10 The Ninth Circuit has held that the FLSA statute of limitations may be tolled. *See*  
11 *Partlow v. Jewish Orphans' Home of So. Cal.*, 645 F.2d 757, 760–61 (9th Cir. 1981), *abrogated*  
12 *on other grounds by Hoffman-La Roche, Inc.*, 493 U.S. at 167. Equitable tolling may be applied  
13 when a defendant's wrongful conduct prevents plaintiff from asserting a claim, or when  
14 extraordinary circumstances impede plaintiff from asserting a timely complaint. *See Stoll v.*  
15 *Runyon*, 165 F.3d 1238, 1242 (9th Cir. 1999). Courts in the district routinely focus the inquiry on  
16 the fairness to the parties, and the time it takes the court to rule on the motion for conditional  
17 certification. *See Dualan*, 172 F. Supp 3d at 1153-54; *see also Small v. Univ. Med. Center of So.*  
18 *Nev.*, 2:13-cv-00298-APG-PAL, 2013 WL 3043454, at \*3 (D. Nev. June 14, 2013).

19 The court finds that plaintiff has not presented justification that warrants tolling the  
20 statute of limitations from the date the complaint was filed nor from the date of October 31, 2018.  
21 While defendants indeed received notice of the claims when the complaint was filed, plaintiffs  
22 have identified no wrongful conduct by defendants that impeded their ability to assert their claims  
23 earlier or to file this motion before February 26, 2019. However, because this motion has been  
24 ripe and unresolved since March 19, 2019, the court finds that potential opt-in plaintiffs could be  
25 unfairly prejudiced by the court's delay. As such, the court adopts the reasoning of other courts  
26 in this district and applies those principles here. *See Dualan*, 172 F. Supp 3d at 1153-54; *see also*  
27 *Small* 2013 WL 3043454, at \*3. Defendants, on the other hand, would not suffer the same  
28 prejudice as potential plaintiffs, as they were aware of their potential liability from the outset of

1 this action. The court therefore tolls the statute of limitations from the day after the motion  
2 became ripe, March 20, 2019, until defendants provide plaintiffs with the putative class members'  
3 contact information. If a plaintiff opts in before the date of defendants' compliance, the tolling  
4 period for that plaintiff runs from March 20, 2019, until the date of that plaintiff's filing of written  
5 consent to opt-in. Tolling does not apply to the plaintiffs who opted in before March 20, 2019.

6 **VIII. CONCLUSION**

7 IT IS THEREFORE ORDERED that plaintiffs Daniel Gonzalez and Jeffrey Hughes'  
8 motion for conditional certification as a collective action (ECF Nos. 43, 44) is GRANTED in part  
9 and DENIED in part as stated in this order.

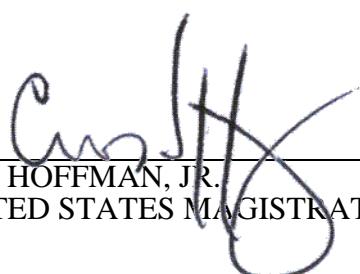
10 IT IS FURTHER ORDERED THAT:

- 11 • Plaintiffs must modify the collective class definition to include "Vacation  
12 Counselors."
- 13 • Defendants must provide plaintiffs' counsel with the mailing address and email  
14 address for putative class members covered by the action within 10 days from the  
15 date of this order. The contact list must be presented in Microsoft Excel or  
16 another compatible format.
- 17 • The parties must meet and confer prior to the resubmission of the proposed notice  
18 and consent form. The proposed notice and consent form must be submitted to  
19 this court within 30 days from the date of this order.
- 20 • Upon court approval of the amended proposed notice and consent form, plaintiffs  
21 must distribute the form via email and mail.
- 22 • Upon court approval of the amended proposed postcard and email reminder,  
23 plaintiffs must distribute the postcard and email reminder to putative class  
24 members who have not joined the action during the first 45 days of the opt-in  
25 period.
- 26 • Potential class members have 90 days from the date of mailing the notice to  
27 submit their opt-in forms.

1 IT IS FURTHER ORDERED that the statute of limitations for plaintiffs' FLSA claims is  
2 TOLLED from March 20, 2019 until defendants provide plaintiffs' counsel with the requisite  
3 contact information. If a plaintiff opts in before the date of defendants' compliance, the tolling  
4 period for that plaintiff runs from March 20, 2019, until the date of that plaintiff's filing of written  
5 consent to opt-in with the court. Tolling does not apply to the plaintiffs who opted in before  
6 March 20, 2019.

7 DATED: July 29, 2019

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10 C.W. HOFFMAN, JR.  
11 UNITED STATES MAGISTRATE JUDGE  
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